

assessment because the provisions of Part VI of the Ordinance, which relate to the recovery of war tax, do not seem to fit in very well with the facts of this case, and the provisions of section 28 (a) and (c) of the Societies Ordinance. However, even though the fund itself and its income are vested in trustees who cannot be made chargeable in person under the Ordinance, yet I suppose the monies and investments held by them as such trustee may properly be regarded as the property of the association for War Tax purposes and so liable to seizure in execution.

For the reasons which I have set out above, and not without doubt and difficulty, I have come to the conclusion that the Collector's assessment in this case should be upheld. Section 6 (1) of the Ordinance seems to indicate an intention, on the part of the Legislative Council, to tax the income of such Provident Funds as this unless special exemption is granted by the Governor in Council; and if it is possible to make the machinery set up by the Ordinance work so as to give effect to that intention, I think that we ought to do so.

This appeal will therefore be dismissed.

E. C. H. Charlwood and P. Sammy : — The facts of the case are fully set out in the learned Chairman's statement of the case with which we agree and we do not think it is necessary to make any additions thereto. We propose to deal with the grounds raised by the petition of the Trustees of A & Co., Ltd. Provident Fund.

A & Co., Ltd. Provident Fund (hereinafter referred to as "the Association") has been exempted from registration under the Societies Ordinance and the benefits conferred on it as an exempted Society under the Ordinance are (among other things) that its property, if not vested in trustees, would be deemed to be vested for the time being in its governing body, that it may sue or be sued in the name in which it was exempted under the Ordinance. If the Association as such is liable to payment of tax and default thereof is made, proceedings may be taken against its principal officer (which includes its secretary, treasurer, manager or agent) and any judgment obtained or order made cannot be enforced against him or his property but may be enforced against the property of the Association.

Under the rules of the Association its property is vested in trustees who are not the beneficial owners thereof, whether corpus or income, but they are persons who hold the same either as trustees, managers or agents for or on behalf of the Association according to its rules.

In the course of administration or management the Trustees have invested the funds of the Association and earned the sum of \$12,489/- for 1940. They may not have carried on a trade or business in the strict commercial sense but the investments made by them whether it be called a business or undertaking or concern have brought in an income which is liable to taxation.

In dealing with the question whether the Association is liable or not, it will be convenient to refer to the position of a company. When a company pays tax on its profits, it does not pay it as agent for its shareholders but pays as a taxpayer. If no dividend is declared by the company, the shareholders are not concerned in the payment of tax by the company. If a dividend is declared, the company is entitled to deduct from such dividends the tax appropriate thereto. A shareholder as such is not chargeable to tax in respect of his dividend nor does he pay or bear an integral part of the taxation imposed upon the company.

In our opinion the tax is payable by the Association as an association. It does not pay as an agent for its contributors but pays as taxpayer itself. The trustees or the contributors are not liable to payment of tax but the Association itself is. In case the trustees pay the tax, they will be indemnified under the War Tax Ordinance in respect of any claim by any person whomsoever for payment thereof.

The legislature must have intended that an association like the one under consideration should be liable to taxation otherwise certain funds exempted under section 6 (1) of the War Tax Ordinance would not be specifically set out. The Governor in Council may grant any association exemption from taxation.

Having regard to all the circumstances of the subject matter of the petition, we find that the Association is liable to taxation. This appeal will therefore be dismissed.

Appeal dismissed.

IN RE A. B.

[Appeal from Assessment of War Tax (Aitken, J. (Chairman), R. Crawford and E. N. C. Woollerton (Commissioners) November 26, 1941]

War Tax Ordinance, 1941, S. 7 (b) — No double income tax.

Whenever income which arises in this Colony pays income tax at not less than the prescribed rate in some other part of the British Empire, it is exempted from taxation in the Colony under s. (7)(b) and s. 30 of the War Tax Ordinance, 1941. For this purpose it is immaterial whether the income is treated in one place as

being the property of certain individuals and in the other place as being the notional property of a partnership or association composed of those individuals.

APPEAL.

Roland Braddell for Appellant.

G. C. Howell (Attorney-General) for Collector of War Tax.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

The judgment of the Board of Commissioners was as follows :—

The petitioner is the principal officer in Singapore of an Indian partnership firm known as Messrs. A. B. which carries on a silk merchants' business here; and on behalf of that firm he asks us to set aside its assessment for war tax as contained in the above mentioned notice.

On the 1st of October, 1941, and then only as a result of pressure by the Singapore Division Collector of War Tax Messrs. A. B. sent in a "provisional return" of the net profits made by the firm at Singapore during the last financial year. By that return its income for the last financial year from its business here was estimated at the figure \$24,000.

On the 2nd October, 1941, the Collector gave Messrs. A. B. notice that he was tentatively assessing them to war tax at 8% — the appropriate rate in Schedule A to the War Tax Ordinance — on their figure of \$24,000, that is, the amount of \$1,920. He added that he was taking the advice of Assessors as to the probable amount of their profits, and warned them that he would be issuing an additional assessment if he was advised that their estimate of the same was too small.

No such additional estimate has been made, so far as we are aware, so that for the purposes of this appeal we must assume that Messrs. A. B. have been assessed to war tax in the amount of \$1,920 on account of the net profits of the silk merchants' business carried on by them at Singapore.

As in the case of so many Indian partnership firms doing business in this Colony, all the partners of Messrs. A. B. are resident in India. It is alleged that the partners have paid, or will pay, income tax in India on all the net profits earned by the firm in this Colony at a rate not less than the appropriate rate specified in Schedule A to the War Tax Ordinance. It is therefore claimed, on behalf of the firm, that section 7(b) of the Ordinance applies to so much of the firm's income arising from its business in this

Colony as has paid, or will pay, income tax in India at a rate of not less than 8%.

Now a firm is an association as that term is defined in section 2 of the Ordinance, and section 7 (b) thereof, so far as its provisions are material for our purposes, reads as follows :—

"In calculating the income on which an association shall pay war tax a deduction shall be made in respect of any income on which income tax has been paid or on which it is proved to the satisfaction of the Collector income tax will be paid in any other part of the British Empire at a rate not less than the rate specified in Schedule A".

Reading the words of this paragraph in accordance with their ordinary and grammatical meaning, they certainly convey the impression that the Legislative Council, when it enacted them, intended to obviate the danger of the same income being taxed twice over at a rate at least equal to the appropriate figure applicable thereto in accordance with Schedule A to the Ordinance.

The Attorney-General and the Collector-General have, however, read them in a very different and, to our minds, a somewhat narrow sense. Paragraph 3 of the letter which the Collector for the Singapore Division wrote to Messrs. A. B. on the 26th of August, 1941, sets out their view of the true meaning of section 7(b) so clearly and concisely that it will bear quotation in extenso :—

"It further appears that you are an Association, (and therefore) you will not be able to claim any deduction under section 7 (b) of the Ordinance on the grounds that your Colony income has borne Indian income tax at a rate not less than the rate applicable. Associations are not taxed as such in India and, even though you produce evidence that the members of your Association have paid India income tax on their respective share(s) of the Colony income, I cannot agree that you are entitled to any deduction in respect of the Indian income tax".

But section 7(b) does not say that an Association shall be allowed a deduction in respect of any income on which income tax has been paid by the Association as such, or on which it is proved to the satisfaction of the Collector that income tax will be paid by the Association as such. Those words "by the Association as such" are not to be found anywhere in section 7 (b) of the Ordinance, and since the words which the Legislative Council did see fit to employ made perfectly good sense and give effect to an obvious principle of

justice which has always been recognised throughout the British Empire we can see no reason for importing any words which will bring about an equally obvious injustice.

For this simple and, to us, satisfying reason, we hold that the view taken by the Attorney-General and the Collector-General of the true meaning and construction of section 7(b), when the question is one of calculating the income on which an "association" shall pay war tax, is wholly wrong, and that the view for which Messrs. A. B., with the assistance of Mr. Braddell contend, is wholly right. After all, as Mr. Braddell pointed out, a partnership firm has no existence in point of law though the Taxation Ordinance and Rules of Court may endow it with a notional existence for certain limited purposes. The income of a partnership firm belongs, not to the firm, but to the partners who constitute it; and if they pay a sufficient sum by way of tax in India on that income, it seems to us that section 7(b) provides that the same income on which they have paid such tax in India should not be taxed again here.

Perhaps it may be convenient to summarise our own view of section 7(b) as follows:—It comes into operation whenever income, which arises in this Colony, pays income tax at not less than the prescribed rate in some other part of the British Empire. So long as the income which is in danger of being taxed twice over is the same income, then it does not seem to matter whether it is treated, in one place, as being the property of certain individuals, and in the other place as being the notional property of an association composed of those individuals. The object of section 7(b) is to prevent the same income being taxed twice over, and that object should not be defeated by a surrender to fine distinctions which, though drawn by acute legal minds, make no difference in the affairs of men.

In the result this appeal is allowed, and the assessment to war tax contained in Assessment Notice No. 523 is hereby set aside.

Order Accordingly.

IN RE K. T. K. TANGAMANI.

[Orig. Civil Juris. (McElwaine, C.J.) August 28, 1941]

Advocates and Solicitors Ordinance (Cap. 62), s. 5, sub-s. 3.

If a candidate for admission has read in the Chambers of a practising barrister for 6 months or longer, it is immaterial whether that period of reading takes place

before or after his call to the English Bar, for the purpose of s. 5, sub-s. 3(a) of the Advocates and Solicitors Ordinance.

Case referred to:—

(1) *A. G. v. Lamplough* 3 Ex. D. 214.

PETITION.

J. C. Cobbett for petitioner.

E. R. Koek for Bar Committee.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

McElwaine, C. J. :—The applicant was called to the English Bar on 5th June 1940.

From 1st June 1939 to 31st May 1940 he was a pupil in the chambers of a barrister of more than seven years' standing practising in England.

From 3rd February 1941 the applicant has attended and received instruction in law at the office of an advocate and solicitor of more than seven years' standing in this Colony, and he now (in August 1941) applies to be admitted to the Bar of the Colony.

The only question raised before me is as to whether the application is premature, and the determination of his question depends on the true construction of s. 5 ss. 3 of the Advocates and Solicitors Ordinance.

The policy of the section is to require a candidate for admission to have been a pupil of a barrister or to have read in chambers for at least twelve months, of which at least six months must have been spent in the chambers of a local lawyer of at least seven years' standing.

Section 5, sub. s. 3 of the Ordinance so far as material is as follows:—

Before any order shall be made by the Court on his petition every petitioner shall have attended and received instruction in law in the office in the Colony of a practising advocate for the period hereinafter mentioned, namely:—

(a) If the petitioner is a barrister of England and has previously been a pupil of or read in the chambers of a practising barrister and has

(i) been a pupil or read in chambers as aforesaid for six months or longer—a period of not less than six months; or

(ii) been a pupil or read in chambers as aforesaid for less than six months such period as together with the period during which the petitioner has read in chambers makes a total of twelve months.

The point shortly is, does the time spent as a pupil or reading in the chambers of an English barrister before the petitioner's call to the English Bar, count?

I think there can be no doubt that the person who is to read in Chambers in the Colony is a person who